

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant/Owner:** Bonnie Smith

**Date application filed with the Town Clerk:** July 8, 2009

**Nature of request:** Request for Special Permit to create a flag lot, under Section 6.3 and Section 3.25 of the Zoning Bylaw

**Address:** Belchertown Road (Map 21B, Parcel 17, R-O & ARP District)

**Legal notice:** Published on August 26 and September 2, 2009 in the Daily Hampshire Gazette and sent to abutters on August 24, 2009

**Board members:** Barbara Ford, Eric Beal, Mark Parent

**Submissions:**

- Project Application Report, ZBA FY2010-00001, dated September 4, 2009;
- The ZBA application, filed with the Town Clerk on July 8, 2009;
- A survey, title Subdivision Approval Not Required, prepared by Harold Eaton and Associates, dated March 27, 2009;
- A letter from Assistant Chief Michael Zlogar, dated August 10, 2009;
- The Fire Department Access guidelines, submitted by staff;
- A Town GIS location map and one (1) zoning map, submitted by staff;
- A copy of Section 7.7 of the Zoning Bylaw, for reference, submitted by staff.

**Site Visit:** September 8, 2009

Barbara Ford, Eric Beal and Mark Parent met Bonnie Smith and her son at the site. The Board members observed the following:

- The location of the existing driveway, single family dwelling and garage located on the frontage lot;
- The location of a survey stake, marking the southern corner of the flag lot access strip. The survey stake was located partially within the existing driveway for the frontage lot;
- The location the northern survey stake, in an existing wooded area;
- The location of the survey stake at the rear of the frontage lot and beginning of the flag portion of the flag lot.

**Public Hearing:** September 10, 2009

Ms. Smith was accompanied by her son, Shawn Smith. Ms. Smith stated the following:

- She has subdivided the existing parcel to create a frontage lot, where she currently lives, and a flag lot;
- She seeks to formalize the flag lot so that it can be placed on the market and sold;
- She has no current plans to develop the flag lot, but a seller may wish to construct a single family dwelling.

Ms. Ford asked whether the flag lot meets all the requirements of the Amherst Zoning Bylaw. Ms. Smith referenced the Development Application Report provided by the Planning Department which identified that the plan, prepared by Harold Eaton and Associates, meets all the requirements of Section 6.3 of the Zoning Bylaw.

Ms. Ford stated that if the flag lot is sold the purchaser would be required to appear before the Zoning Board of Appeals and they would be responsible for meeting any and all of the conditions of the permit. Ms. Smith stated that any potential purchaser would be informed of the conditions of the Special Permit.

Ms. Ford asked about the existing driveway for the frontage lot and the location of the access strip for the flag lot. Ms. Smith stated that the existing driveway is located partially within the area of the access strip for the flag lot and that she is agreeable to the creation of a common driveway.

Mr. Smith asked for information about the restrictions of Section 3.25, Aquifer Protection Recharge District. Mr. Bagg stated that residential development is restricted as to the use and storage of lawn chemicals and is also limited to building and lot coverage limitations that are more restrictive than what is normally allowed in the R-O Zoning District.

Mr. Parent MOVED to close the evidentiary portion of the public hearing. Mr. Beal seconded and the Board VOTED unanimously to close the public hearing.

**Public Meeting:**

During the public meeting the Board drafted conditions and findings that would be appropriate if the Special Permit were to be approved.

**Specific Findings:**

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 - The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority. The flag lot is located in an area that contains other flag lots and is designed in accordance with all applicable requirements for flag lots found in Section 6.3 of the Zoning Bylaw.

10.381 - The proposal is compatible with existing Uses and other Uses permitted by right in the same District. Although no development is currently proposed, the future, by right use of the property is residential which is compatible with the other residential and non-residential uses in the area. The flag lot is located in an area that contains other flag lots and is designed in accordance with all applicable requirements for flag lots found in Section 6.3 of the Zoning Bylaw.

10.383 - The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians. The proposal is conditioned to require that a common driveway be created for access to the frontage lot and flag lot. A common driveway will reduce the inconvenience or hazards of any vehicles entering or exiting onto Belchertown Road and shall be designed in accordance with the specification of Section 7.7 of the Zoning Bylaw.

10.384 - Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The flag lot is located in an area that contains other flag lots and is designed in accordance with all applicable requirements for flag lots found in Section 6.3 of the Zoning Bylaw.

10.387 - The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements. The proposal is conditioned to require that a common driveway be created for access to the frontage lot and flag lot. A common driveway will reduce the inconvenience or hazards of any vehicles entering or exiting onto Belchertown Road and shall be designed in accordance with the specification of Section 7.7 of the Zoning Bylaw.

10.389 - The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water. Any future development of the flag lot is eligible to connect to town sewer and water supplies. The proposal is conditioned such that any future proposal for development shall be submitted and reviewed by the Zoning Board of Appeals at a public meeting for the Board to ensure that adequate methods are provided. The flag lot is conditioned to require conformance with the restrictions and requirements of Section 3.25, Aquifer Recharge Protection District. These limitations shall apply to any portion of development occurring in this district.

10.394 - The proposal avoids, to the extent feasible, impact on steep slopes, floodplains, scenic views, grade changes, and wetlands. Any future access way to the flag lot shall be constructed in accordance with Section 7.7 of the Zoning Bylaw. This section outlines maximum grade changes allowed for a driveway.

10.398 - The proposal is in harmony with the general purpose and intent of this Bylaw. The flag lot conforms to all of the minimum requirements of the Zoning Bylaw. The flag lot is located within an area where flag lots are permitted by Special Permit and where other flag lots exist. Any future access established on the property shall conform to the minimum requirements for common driveways and any use of the property shall comply with the requirements for the Aquifer Recharge Protection District.

**Public Meeting – Zoning Board Decision**

Mr. Parent moved to APPROVE the application with conditions. Mr. Beal seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2010-00001, to establish a flag lot under Section 6.3 and Section 3.25 of the Zoning Bylaw, at Belchertown Road (Map 21B, Parcel 17, R-O Zoning District and Aquifer Recharge Protection Overlay District), with conditions.

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BARBARA FORD

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ERIC BEAL

\_\_\_\_\_  
MARK PARENT

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2009 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2009.

NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2009  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2010-00001, to establish a flag lot under Section 6.3 and Section 3.25 of the Zoning Bylaw, at Belchertown Road (Map 21B, Parcel 17, R-O Zoning District and Aquifer Recharge Protection Overlay District), with the following conditions:

1. The flag lot shall be configured in accordance with the plan prepared by Harold Eaton and Associates, Inc. dated March 27, 2009 and stamped approved by the Zoning Board of Appeals on September 10, 2009.
2. Prior to the issuance of a building permit, plans for any dwelling, driveway or other improvements shall be submitted to the Zoning Board of Appeals at a public meeting for review and approval.
3. Access to the flag lot shall be designed to provide common access with the adjacent frontage lot shown on the approved plan.
4. Prior to construction, any and all applicable legal documents, including but not limited to, easements, right-of-way or maintenance agreements, shall be prepared and submitted to the Zoning Board of Appeals for review and approval at a public meeting.
5. Prior to construction, a plan showing any future access, designed in accordance with the requirements of Section 7.7, Access Requirements and Driveways, shall be reviewed by the Town Engineer and Fire Department then submitted to the Zoning Board of Appeals at a public meeting for review and approval.
6. All applicable regulations of the ARP District, Section 3.25 of the Zoning Bylaw, shall be met if the property is developed, including, but not limited to, the use of chemicals listed in Section 3.254 and the dimensional regulations of Section 3.257.
7. In accordance with Section 14 of the Zoning Bylaw, the development authorization for this flag lot is available as of October 2009.
8. This permit shall expire in two (2) years from the date of filing with the Town Clerk if no substantial construction has occurred.

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BARBARA FORD, Acting Chair  
Amherst Zoning Board of Appeals

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DATE